

# **CORRESPONDENCE ABOUT CATHOLIC 6<sup>TH</sup> FORM COLLEGES WITH EQUALITY AND HUMAN RIGHTS COMMISSION**

20 December 2008

Ms Nicola Brewer, Chief Executive, and  
Mr John Wadham, Legal Director  
c.c. Mr Patrick Diamond and Mr Trevor Phillips  
Equality and Human Rights Commission  
3 More London, Riverside  
Tooley Street  
London SE1 2RG

Dear Ms Brewer and Mr Wadham

## **Formal Request to EHRC to use its powers to enforce Equality Enactments**

The National Secular Society formally requests the EHRC to use its powers under the Equality Act 2006 to enforce equality enactments in respect of the matters shown below.

We request a formal acknowledgement of our request together an indication, please, of the process the Commission will take in respect of our request and the approximate timescale envisaged.

We are happy to provide any further clarification or information sought and are happy to assist the Commission in any way we can, including coming to your offices to discuss this.

One of our vice Presidents, Dr Anna Behan, and I are scheduled to meet Patrick Diamond on 27 January. We ask for this matter to be added to the agenda for that meeting.

Yours sincerely

**Keith Porteous Wood**  
**Company Secretary**

## **Formal Request to EHRC to use its powers to enforce Equality Enactments**

This is a formal request by the National Secular Society to the Equality and Human Rights Commission to use its powers under the **Equality Act 2006** to enforce equality enactments.

### **Section 1: Background**

#### **Summary of relevant equality enactment and nature of alleged breaches**

This request concerns alleged breaches of **The Employment Equality (Religion or Belief) Regulations 2003** (“**the Regulations**”) by certain Roman Catholic Sixth Form Colleges (“**RCSFCs**”). The RCSFCs in question are Further Education Colleges and appear to be in breach of **Regulation 20** in respect of their admissions policies governing vocational courses. Because of their designation as FE Colleges, the RCSFCs fall within the definition in Reg. 20 (4) of institutions to which Regulation 20 applies. This originally made unlawful all discrimination in

respect of admissions on the grounds of religion or belief regardless of whether the nature of the course applied for was vocational or academic. There was a campaign for some form of exemption from the operation of Reg.20 which, as it stood limited their rights to discriminate in respect of all admissions. An exemption was made in **The Employment Equality (Religion or Belief) (Amendment) Regulations 2004/SI2004 No.437** which came into force on 1<sup>st</sup> April 2004 for sixteen named institutions, all RCSFCs. This exemption allowed the RCSFCs to disapply **Regulation 20(1)(b)** “in so far as it is necessary for an institution to give preference in its admissions to persons of a particular religion or belief in order to preserve that institution’s religious ethos”. s.3 of SI2004 No.437 sets out that this exemption does not apply to “any admission to a course of vocational training”.

Our principal concern is that a number of the RCSFCs are in breach of **Regulation 20** in respect of their admissions policies essentially by giving preference to Catholics applying to study vocational subjects, either by stated admission criteria which give precedence to Catholics, or by criteria which treat non-Catholics differently, or by other requirements which discriminate against non-Catholics.

We have examined the websites of the sixteen RCSFCs named in SI2004 No.437; these vary considerably but while all the RCSFCs named below offer vocational courses, none makes it clear on the face of it that different rules apply to admissions for vocational and non-vocational subjects. One confirms that the same criteria (giving preference to Catholics) apply to both vocational and non-vocational courses, and others appear to apply more stringent entry requirements to non-Catholics. The details of the alleged breaches are set out in Section 2.

## **Reasons why EHRC should exercise its powers in these cases**

- (a) **Blatant Breach:** First and foremost, the evidence offered below gives what amounts, in our view, to an unequivocal breach of equality legislation by the RCSFCs. The breaches are open and blatant and bring the equality regime into disrepute. We do not consider that the breaches can be inadvertent given the existence of SI 2004No.437 which arose from protests on behalf of the RCSFCs. Moreover, at least one RCSFC (Aquinas College) has had its attention drawn by the DfES (letter dated 4 June 2007) see Appendix 1) to the breach outlined in Section 2 Category 1 and has not changed the relevant section of its website. Only action by the EHRC is likely to bring about change.
- (b) **Widespread Breach:** We name twelve RCSFCs below, out of sixteen in total. Of the sixteen, some do not make plain the relevant facts on their websites; none, however, draws a distinction between vocational and non-vocational courses. Again, the scope of the problem requires EHRC involvement for resolution.
- (c) **Discriminatory Practice:** The open and widespread nature of the breaches amounts to a form of discriminatory practice. We consider that most applicants will assume that the criteria published on the RCSFCs websites are lawful (at least one example, Carmel College, of an alleged breach is located in the RCSFC's Equality and Diversity Policy); few (if any) applicants will be aware of their rights under the Regulations. This reduces the pool of potential claims under the Regulations; at the public level, this means that any breaches are not likely to be corrected even on a gradual, piecemeal basis, while at the individual level, those with potential claims are likely to be deterred.
- (d) **Relevant Government Department Unwilling to Address Breaches:** We attach a file of correspondence (Appendix 1) between the NSS and the DfES on the subject of these breaches. As will be apparent, the DfES declined to adopt any enforcement role, and moreover, declined to accept evidence of breaches as such (although in the case of Aquinas College this entailed assuming (without evidence) that the College did not follow its admissions policy as published on the website). We draw attention in particular to the denials that the DfES had knowledge that the RCSFCs offered vocational courses despite NSS references to DfES documents containing this information. We were particularly affronted by the comment in a letter dated 12 February 2007 "it is perhaps worth commenting that attendance at a Catholic sixth form college is a matter of choice". As we commented in our reply, we cannot imagine that if an organisation from any other equality strand raised concerns that an institution was in breach of equality legislation that a comparable argument would be employed. The DfES subsequently accepted that the element of choice is not relevant in assessing whether or not a particular college is in breach of the regulations and stated that the remark covered the situation where a student felt uncomfortable for a reason not amounting to discrimination; we struggle to accept, however, that the original comment gave an impression of fair and impartial hearing of our complaint. The relevant Government Department declined to act and we believe that no other government body will exercise a discretion to act; in our view, there is no practical alternative to the EHRC exercising its statutory powers. We do not see how the provisions of the Regulations can be given meaning or effect unless the EHRC takes steps to ensure enforcement.
- (e) **Enforcement of the Directive:** Without the EHRC exercising its powers, we fear that there will be no effective enforcement of this area of application of the Equal Treatment Directive. Potential applicants, even if they appreciate their rights, might be reluctant or unable to enforce them. The individual must consider the risks of the immense imbalance of resources between the parties to any claim, the official hostility any such claim would entail (as demonstrated at (d) above and Appendix 1), and the impact on their future career that the uncertainty of a tribunal hearing would entail. No government department has been charged with the responsibility of enforcing the Regulations. Without EHRC action, we fear that potential breaches will fail to be challenged.

## **Section 2: Details of alleged Breaches**

**NB Some RCSFCs appear in more than one category below. All information obtained from the relevant RCSFCs' websites.**

### **Category I: RCSFCs with Published Admissions Criteria giving explicit preference to Catholics for vocational courses**

- (a) *Aquinas College, Stockport (www.aquinas.ac.uk)*: This RCSFC website states that it will consider applications in the following order of priority: 1. Catholics from the college's Catholic partner schools 2. Catholic applicants from other schools 3. non-Catholic applicants from Catholic schools 4. brothers and sisters of present or former students of the college and children of staff and governors of the college 5. other applicants in order of receipt of application form. This list is then immediately followed by the statement: "There is no selection of applicants on other grounds". This confirms that there is no separate set of admissions criteria for vocational courses. We refer this to the EHRC as a

clear example of an admissions policy which is in breach of Regulation 20(1)(b) by discriminating against applicants whose religion or belief is not Catholic by giving preference to Catholics.

- (b) *St Francis Xavier College, Wandsworth* ([www.sfx.ac.uk](http://www.sfx.ac.uk)) : The website for this RCSFC gives its admission criteria as follows: 1. exam entry requirements, 2. attendance at Catholic partner schools, 3. In the event of a need to choose between students attending partner schools and following that between students from other institutions, priority will be given to attendance at Catholic non-partner schools, subject chosen, date of application and distance of travel. It also states “We offer general vocational courses in a range of areas that enable progression to further/higher education or areas of employment; our admission criteria for these course in the event of over-subscription are *the same as for our general academic courses*” (our emphasis). Nursery nursing courses are correctly exempted from the criteria relating to attendance at Catholic schools, but no other vocational courses. We refer this policy to the EHRC as a clear example of an admissions policy which is in breach of Regulation 20(1)(b) by discriminating against applicants whose religion or belief is not Catholic by giving preference to those who attended Catholic partner schools.

We ask that the EHRC acts on this evidence to prevent both the advertisement and the implementation of admissions policies such as these which on the face of the documents discriminate illegally against non-Catholics.

**Category 2: RCSFC with Published Admissions Criteria which apply different requirements, or a different admission procedure, for non-Catholics**

- (a) *Holy Cross Sixth Form College, Bury* ([www.holycross.ac.uk](http://www.holycross.ac.uk)) : The published admissions criteria in the Prospectus state that non-Catholics might be asked to achieve higher grades than non-Catholics: The website states “due to its distinctive religious character, Holy Cross gives preference to Catholic students, but it welcomes student applications from all faiths. Catholic students from Bury and the surrounding area are usually guaranteed a place provided that their application form is received by the closing date, the college has a suitable course for them and they meet the entry requirements....If application numbers are extremely high, non-Catholic students may be asked for higher grades to guarantee a place.” No distinction is drawn between applications for vocational and non-vocational courses. A requirement for higher grades for non-Catholics for admission to vocational courses is discriminatory and in breach of Regulation 20(i)(b).
- (b) *Christ the King Sixth Form College, Lewisham* ([www.ctksfc.ac.uk](http://www.ctksfc.ac.uk)): Applicants from partner schools (six out of seven are Catholic institutions, and the seventh is a Church of England school) have an earlier date by which to return their applications, and are guaranteed an interview.
- (c) *Carmel College, St Helen's* ([www.carmel.ac.uk](http://www.carmel.ac.uk)): The Prospectus states that applicants for advanced courses from the partner schools (at least seven of the nine partner schools are Catholic institutions) have to achieve a minimum of 2Bs and 3Cs whereas other applicants have to achieve a minimum of 4Bs and 1C. Advanced courses appear to include vocational A levels such as Travel and Tourism the course for which Carmel College describes as follows: “The vocational nature of the course is maintained throughout as you will be given the opportunity to work with external agencies through work experience and the completion of industry investigations”.

**Category 3: RCSFCs offering vocational courses with a single set of published admissions criteria (implicitly applying equally to vocational and non-vocational courses) giving preference to Catholics**

- (a) *Carmel College, St Helens*: No details are given of admission criteria for courses other than advanced courses, but no distinction is made evident for vocational and non-vocational courses. The Equality and Diversity Policy states that “Because of its distinctive religious character Carmel College gives preference in its admissions policies to Catholic students but it does, as the Mission Statement says, welcome applications from students of all faiths”. Even in respect of admission to non-vocational courses, we do not accept that this is an accurate paraphrase of the Regulations; no reference is made to any preference being necessary in order to preserve the ethos of the college. Insofar as this applies to academic courses as a blanket preference, we submit that it is a breach of Regulation 20. In addition, no welcome is offered to students of no

- faith with an implication that they are therefore not eligible to apply. It is particularly disturbing to see this in an Equality Policy.
- (b) *Christ the King Sixth Form College, Lewisham*: The first two admissions criteria are “students from partner schools” (NB all the partner schools are Christian, and six out of seven are Catholic), and “other Catholic students”.
  - (c) *Holy Cross Sixth Form College, Bury*: see above under Category 2;
  - (d) *Notre Dame Catholic Sixth Form College, Leeds* ([www.notredamecoll.ac.uk](http://www.notredamecoll.ac.uk)): The first priority is given, in Category 1 to applicants from named Catholic partner schools, Category 2A gives preference to applicants from other Catholic 11-16 schools, and 2B to applicants from other Catholic institutions, Category 3 to Catholic pupils attending non-Catholic institutions.
  - (e) *St Brendan’s Sixth Form College, Brislington, Bristol* ([www.stbrn.ac.uk](http://www.stbrn.ac.uk)): this selection policy has two categories, the first for applicants from partner schools, other members of the Catholic community, siblings and those with special pastoral or academic needs, and the second for applicants from supportive religious backgrounds and any student who accepts and supports the Catholic ethos and wider aims of the College. In addition to prioritising Catholics, this policy appears to exclude entirely any applicant who is not supportive (i.e. a positive obligation) of a Catholic ethos.
  - (f) *St Charles Catholic Sixth Form College, London W10* ([www.stcharles.ac.uk](http://www.stcharles.ac.uk)); The first category is for disabled applicants, category 2 for applicants from partner schools without sixth form provision, category 3 for Catholic students from other secondary schools and finally, in category 4, students from outside the Catholic tradition in other secondary schools.
  - (g) *St David’s Catholic College, Cardiff* ([www.st-davids-coll.ac.uk](http://www.st-davids-coll.ac.uk)); The Prospectus gives an extract from the Admissions Policy. This opens with the statement; “As a designated Catholic College, Saint David’s is required to give priority to Catholic students, although the College does wish to offer its services to students drawn from the wider community, who would benefit from its particular ethos.”. This does not accurately reflect Reg. 20(1)(b) as amended. Any “requirement” to give priority to Catholic students must be only so far as it is necessary to preserve the college’s religious ethos. This is a significant limitation on the college’s right to give priority to Catholic applicants (and a significant protection for persons with other religions or beliefs), which this extract from the Admissions Policy effectively removes. We consider that this admissions policy discriminates against non-Catholic applicants for non-vocational courses as well as vocational courses. The first three priorities for admission are 1. past and present students of four Catholic partner schools 2. Catholic students of Cardiff and Vale of Glamorgan schools. 3. other Catholic students in the region;
  - (h) *Xaverian Sixth Form College, Manchester* ([www.xaverian.ac.uk](http://www.xaverian.ac.uk)); The website states “If you attend a Catholic or Trinity Church of England school, or you are a Catholic studying at another school, your place is guaranteed provided you apply before the deadline and we have a course which meets your needs. If you attend another school, we will reply very quickly to your application and do everything we can to arrange the right courses for you”.

**I. Category 4: RCSFCs with additional requirements which discriminate directly and/or indirectly against non-Catholics.**

**Requirement for Applicant to accept college rules or to enter into an agreement which, by its nature and content, discriminates against non-Catholics or those without a religion.**

- (a) *Aquinas College*: A necessary condition of entry is acceptance of the Student/College Agreement. This agreement contains an obligation to accept principles stated and implied in the Statement of Purpose, Values and Vision which, in turn states “we also encourage a questioning stance towards the values of our increasingly secular society”;
- (b) *Carmel College*: The Vision Statement says that all members of the College community are expected to make an active contribution to this Vision. The Vision states that Carmel College is founded on the person, the example and teaching of Jesus Christ and acknowledges the need for God, and the guidance of the Holy Spirit in the creation of a truly Christian community.
- (c) *Christ the King Sixth Form College, Lewisham*: the Mission Statement expects students to show commitment to the Christian values of the College.
- (d) *St Brendan’s Sixth Form College, Brislington, Bristol*: The equality Policy 1.2 states that a fundamental condition of an offer of a place at the College is that all students will be expected to support the College’s Christian ethos;

- (e) *St Mary's College, Blackburn*, ([www.stmarysblackburn.ac.uk](http://www.stmarysblackburn.ac.uk)); The College's Equal Opportunity Policy Statement states at para. 2.3 "All students will be expected to support the college's Christian ethos".

**II. RCSFCs with a character or an ethos statement that discriminates against, in particular, those without a religion, and also more generally against non-Catholics (and indeed against Catholics) who do not wish to support the college ethos**

Several RCSFCs have ethos statements which proclaim their Catholic status; those listed below go further, however, in that they explicitly or implicitly require all students whether on vocational or non-vocational courses to accept or demonstrate religious values, or to have to study in an environment in which their freedom of conscience is limited.

- (a) *Carmel College*: website states: "Spiritual and moral education is integral to the teaching of all curriculum areas and the enrichment activities of the College. Personal and spiritual development are thus core values in the student experience"; The College Charter says that students must respect the Christian values on which the College is based and attend all lessons including general religious education.
- (b) *Christ the King Sixth Form College*: the Mission Statement expects all students to show commitment to the Christian values of the College;
- (c) *St Charles Catholic Sixth Form College*: The Admissions Criteria section opens with a paragraph mentioning the requirement for all students to give a statement to acknowledge the religious nature of the College and how they could be supportive of it. Although it is stated that this will not be used to determine places, the prominence of the request and the implicit requirement for support could effectively deter anyone who was not supportive of the religious nature of the college. The Application Form reasserts this by requiring all applicants to give a statement making clear their reasons for wanting to study at a Catholic college. The rubric reads: "We ask that you use the space below to show your commitment to or recognition of the Catholic values and practices of the College which includes participation in the RE programme for one hour per week. You might wish to include something about your own religious practice". In addition, the prospectus section entitled Catholic Education states: "The College is one in which prayer and reflection –whether in assemblies, tutorials, mass or other services are a regular feature of life";
- (d) *St Dominic's Sixth Form College, Harrow* ([www.stdoms.ac.uk](http://www.stdoms.ac.uk)): website states "at St Dominic's, we expect young people to develop a deeper understanding of religious faith. We foster this through the College's programme of religious education...";

**III. RCSFCs which require all students, without distinction between vocational or non-vocational courses, to attend Religious Education classes. Evidence is included where the RE classes depart from neutral, academic standards and move towards proselytisation, or where they are posited on unproven assumptions that religious or spiritual values are found universally in humans, or are objectively worthwhile. These characteristics have been chosen to highlight the implications for freedom of conscience faced by a rationalist person without religious belief who simply wanted vocational training.**

- (a) Carmel College: The College Charter says that students must respect the Christian values on which the College is based and attend all lessons including general religious education;
- (b) Christ the King Sixth Form College;
- (c) Holy Cross Sixth Form College;
- (d) St Brendan's Sixth Form College; Spiritual Journey Programme is compulsory for full-time students.
- (e) St Charles Catholic Sixth Form College; weekly attendance required at a general RE programme;
- (f) St David's Catholic College;
- (g) St Francis Xavier Sixth Form College; weekly RE, the aim of which is to "enhance each student's awareness of her or his dignity as a human being and as a person loved by God";
- (h) Xaverian Sixth Form College, Manchester.

**Section 3: Formal Request**

**We request that the EHRC use its powers under Equality Act 2006 as follows:**

- Under s.16 to conduct an inquiry into the matters complained of above. The investigation would be in connection with the duty of the EHRC under s.8(1)(d) to enforce equality enactments.
- We also request that the EHRC use as many of its enforcement powers contained ss.20-32 as are appropriate to ensure full compliance by the RCSFCs with the Regulations.

We also ask that the EHRC take action in connection with its duties under s.11 to monitor the effectiveness of the equality enactments. There are several particular areas of concern, in our view.

1. We consider that there should be new offences created parallel to ss.53 and 54 of the Equality Act (which cover Discriminatory Practices and Discriminatory Advertisements) to apply to employment, training and all areas covered by the Regulations. At present, simply publishing an Admissions policy, or Equality Policy, giving preference to Catholics in circumstances in which this is not legal is not an offence despite its undoubted deterrent and discriminatory effect. As we have shown above, this has already occurred and it is inimical to the promotion of equality and a climate of compliance with the equality enactments. We ask the EHRC to consider suggesting new offences to cover this and discriminatory practice in relation to the Regulations. This would make effective enforcement easier since it would obviate the need for vulnerable individuals to establish a case. It would also help to change a culture in which RCSFCs, in our view, feel no apparent curbs on their entitlement to discriminate.

2. We ask the EHRC to consider whether the requirement in the legislation for an individual victim satisfies the duty of enforcement placed upon states by the Equal Treatment Directive. It is not appropriate to conduct detailed analysis, or to consider specific new proposals in this document, but we put on record the request for this area to be considered, and our readiness to present a more detailed submission on this point, if requested.

3. We have provided evidence of the unwillingness of the DfES to take any adequate steps to maintain the effectiveness of the law in Section 1 above (in para (d) under "Reasons why EHRC should exercise its powers in these cases"), and also in Appendix 1 below. In the circumstances, we ask the EHRC to consider how the Regulations are to have any meaning or effect unless the EHRC intervenes in pursuance of its duties and whether government departments should have responsibility for this. It is our view that the EHRC needs to take steps to protect and enable enforcement if the provisions of the **Regulations** are to have any meaning or effect.

## Appendix 1

Correspondence between NSS and DfES on St Luke's Catholic Sixth Form College

<http://www.secularism.org.uk/uploads/nssdfescorrespondence.pdf>

challenging religious privilege

5 April 2009

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Dear Nicola

Formal Complaint - Roman Catholic Sixth Form Colleges

We thank the Commission for Patrick Diamond's response dated 3 March 2009 indicating that the Commission is considering this issue from a legal enforcement perspective. We have, however, concerns (which we set out below) about the methodology you indicate will be used. Could you please confirm to us that this letter setting out these concerns has been circulated to those conducting the inquiry into this matter, please?

1. "Emerging Gaps"

What are the "emerging gaps" that you will ask the RCSFCs about? Are they between divergent criteria for admission to vocational and non-vocational courses? If not, can you please explain to what type of distinction the gap refers. Given that the RCSFCs which are the subject of complaint in our Formal Request gave preference to Catholic applicants for both vocational and non-vocational courses prior to December 2nd 2003,

any such gaps should not be "emerging" (which suggests a process over a period of time) but should, in order to comply with the law, have crystallised on December 2nd 2003. We are concerned that the phrase "emerging gaps" suggests an acceptance on the part of the EHRC of a gradual change which is impermissible under the Regulations. Can you please clarify the reference to "emerging gaps" to explain what the gaps are and why you consider them to be emerging.

## 2. Request for "conclusions reached" by the RCSFCs

Also in connection with the reference to "emerging gaps", we have concerns that the investigation as described in your letter of March 3rd will not address the substance of our Formal Request. As previously stated, discrimination on grounds of religion or belief for admission to vocational courses at FE Colleges has been illegal since 2nd December 2003. The relevant questions to be investigated, therefore, to establish whether there has been an objective breach of the Regulations are: (a) what the admissions policies of the RCSFCs have been since December 2003; and (b) whether these are (and have at all times been) in compliance with the Regulations. We consider that asking the RCSFCs about "conclusions they have reached regarding any emerging gaps between vocational and non-vocational courses" is inviting a subjective response which is irrelevant in this context. We cannot see how such responses "can inform sc.[your] subsequent evaluation of whether the exemption has been used lawfully". The subsequent evaluation should be a review of factual responses and a legal analysis designed to test the facts for compliance with the Regulations. We would like to emphasise that the Regulations provide a total ban on discrimination on the grounds of religion and belief for admissions to vocational subjects; there is no scope for an institution to consider elements such as whether preference may be given to Catholics to preserve its ethos, or other issues. Similarly, the duty placed on the EHRC by s.8 of the Equality Act 2006 is without qualification that it shall enforce the equality enactments. We do not see any element of discretion in either provision. If the evaluation of material gathered by the EHRC in its investigations does not follow an objective pattern of fact gathering and legal analysis but strays into considering irrelevant factors such as conclusions reached by the RCSFCs on "emerging gaps" to establish the legality of the use of the exemption, then we would have to consider judicially reviewing any decision based on this flawed approach to allegations of breaches of equality legislation.

In addition to confirming that these points have been passed to those conducting the investigation, we also seek a substantive response on the points raised so that we may consider with our legal advisors whether the investigation as proposed satisfies the concerns we raised in our Formal Complaint. We would be grateful if you would provide us with a copy of the letters to the RCSFCs, and, if they have not yet been sent, an opportunity for us to comment on the draft in light of our remarks above. We would also appreciate an indication of the timetable for future action envisaged by the EHRC in resolving our Formal Complaint. We are conscious of the fact that arrangements for a new admissions year will already be underway in many RCSFCs and that if the EHRC does find that there have been breaches, then it will presumably wish to take prompt action.

Yours sincerely

**Keith Porteous Wood**  
**Company Secretary**



6 November 2009

Jayne Hardwick and Paola Ucellari  
Equality and Human Rights Commission

By email

Dear Jayne and Paola

### **Follow up to 5 November discussion**

Thank you for setting up the call today with Peter Vlachos and me. We really only had a chance to mention the headline issues, but here is a brief follow-up.

We agreed to provide and are enclosing:

- Our silk's advice on School Standards and Framework Act 1998 (SSFA) ss 58 and 60 (on discrimination against teachers on the grounds of religion and belief in schools of a religious character).
- Recent relevant correspondence with the Commission, in particular to show the breadth of items raised in the past, some of which may still be relevant.

During the call we identified the following as the most key issues, both on grounds of importance and because they are relevant to the Equality Bill before Parliament. You asked what our expectations were for action by the Commission over these matters. We indicated that we hoped that the Commission would cause amendments to be made to the Equality Bill in line with our concerns, although we accept that the issues in 5 have not yet been sufficiently specified. We would welcome an early meeting to flesh these out in case some can be the subject of amendments to the Equality Bill while this is still possible:

- SSFA, especially 60(5) and regression by virtue of Education and Inspections Act 2006, s 37.
- Faith based welfare: ability of religious organisations to discriminate on grounds of religion/belief in employment and possibly also service delivery
- Scouts – retention of recent exemption for existing charities on a religious oath.

As you know, the call was cut short due to technical difficulties. I would like to add a couple of items, but even after them this remains a preliminary list. The two items are Scouts (fourth) and education for the non-religious (fifth). Clearly in the latter case we need to have a discussion about this but the subject is so large it will need to be a dedicated meeting. Perhaps you could tell us when this would be convenient. I am happy to flesh this out initially by telephone, should you think this is likely to be helpful.

- **Roman Catholic Sixth Form Colleges, where we have already made a complaint to the European Commission which we know it has taken up with the Government. We insisted that the Bill Committee were informed about this. The attached correspondence explains more, but if you need any further information please come back to me.**
- Another major area we would like to cover with you relates to education in general – where in a multiplicity of ways the non-religious are disadvantaged to the extent that we are advised it is likely to engage Human Rights concerns. A flavour of this is given in the attached letter about school provision in Swanage. Some issues concern the non-religious being materially disadvantaged from access to local schools, or to good schools; there is evidence that faith schools' admissions criteria have the effect of allowing them to cherry pick pupils, creating "private schools on the rates". The non-religious desirous of such schools are frequently forced to attend church when they would not otherwise do so and pay into the collection to obtain it, or go without education of equivalent calibre. I am not sure whether the following injustice would be within the scope of the Equality Bill to rectify, but JCHR have backed our calls for pupils of sufficient maturity and intelligence to be allowed to opt themselves out of Collective Worship and Religious Education, but the Government have not acceded to this.
- We touched on our concerns over the conflation of race and religion. Clearly with Jews, there is much understandable crossover (as we see with the JFS case). This crossover was why court decisions created precedents which permitted Jews, and similarly Sikhs, protection under race hatred legislation,

something considered but specifically rejected by Parliament, we think wisely – at least at that time. Now there is pressure to bring Muslims into this conflation. We have been disturbed by the eagerness of some Muslims to brand any criticism as “Islamophobia” and them adding that Islamophobia is racist and therefore those they judge guilty of Islamophobia are racist. This can develop into criticism of any Muslim or Islamic practice being branded as Islamophobic and hence racist. Similarly we find a tendency in the police and CPS, and the media, to describe attacks against Muslims and possibly other minority ethnic groups as racist. We accept that occasionally the word Muslim may be used as a proxy to evade a racist alternative in an attempt to circumvent the law, and if this is proved it should be treated as a racist matter. But we also worry that the lower burden of proof for racist matters may be being exploited.

As you may know, the Society was partly responsible for the much higher burden of proof in the Racial and Religious Hatred Act. We campaigned for this because we believe that freedom of expression is important and its suppression on such sensitive areas could even drive dissent underground to fester. Also, many religious matters (and indeed religious leaders) are contentious and can have powerful influences on behaviour; it is not in the public interest for either to be beyond spirited debate in a way that would be unthinkable on race.

Could we just log this issue for you to be aware of and to return to it after the more specific issues above have been dealt with, please?

You indicated that you were reviewing your litigation strategy. We would like formally to log items 1-4 above for consideration, and item 5 (education – the non-religious) when we have fleshed out this issues with you. We will be delighted to provide more detail. Item 6 to be considered thereafter.

You also informed us you would be consulting on Harassment in the context of the Equality Bill; we formally indicate our wish to participate. Please ensure we are personally sent the relevant papers for this and any other consultations on guidance notes.

We place on record our willingness to assist on any matters, respecting any confidentiality requested.

Yours sincerely

**Keith Porteous Wood**  
**Executive Director**

21 January 2010

John Wadham  
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Dear John

Thank you very much for your letter of 19 January.

- Reasoned Opinion

It was kind of the Commission to congratulate us.

- SSFA

We are most grateful for your support on Schools Standards and Framework Act s60(5). Could you let me know a s a p (by phone or email) to whom you wrote in the GEO as Melanie Field is not aware of the letter and the matter comes up in Monday in the House of Lords.

- Faith based welfare

I should say that the question of employment discrimination in faith based welfare is already tabled as an amendment, probably for Monday, and we would very much appreciate the Commission's support:

Schedule 9 BARONESS TURNER OF CAMDEN
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101A	Page 165, line 31, at end insert—
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"(d)	A is not operating as a public authority, on behalf of a public authority or operating in relation to a contract with public authorities."
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- **RC 6th Form Colleges**

**Thank you for taking this up. I would be grateful to know when you envisage being able to come back to us.**

- Scouts

While I even we accept that there is not time for a debate on this, I wonder whether you would be prepared to write to the Scouts expressing concern about those that they are rejecting, given this is not an overtly religious organisation and is in receipt of considerable public funds and is often the only youth body in many locations.

**With best wishes**

**Yours sincerely**

**Keith Porteous Wood**  
**Executive Director**

28 March 2010

Karen Jochelson, Director of Research  
c.c. Gill Street, Head of Stakeholder Relations and  
Jonathan Evans, Stakeholder Relations, Religion and Belief  
EHRC, by email.

Dear Karen

Follow up to 24 March 2009 meeting

It was a pleasure for Council member Peter Vlachos and I to meet you all on Wednesday. Thank you for making us so welcome and I hope you found our contribution helpful.

In case it is easier to have it in electronic form, I have pasted below the (6 November 2009) NSS letter I handed over as the starting point and to which I have added other issues we raised. Items in bold are current priorities:

*6 November 2009*

*Jayne Hardwick and Paola Ucellari*  
*Equality and Human Rights Commission*

*By email*

*Dear Jayne and Paola*

*Follow up to 5 November discussion*

*Thank you for setting up the call today with Peter Vlachos and me. We really only had a chance to mention the headline issues, but here is a brief follow-up.*

*We agreed to provide and are enclosing:*

- *Our silk's advice on School Standards and Framework Act 1998 (SSFA) ss 58 and 60 (on discrimination against teachers on the grounds of religion and belief in schools of a religious character).*
- *Recent relevant correspondence with the Commission, in particular to show the breadth of items raised in the past, some of which may still be relevant.*

*During the call we identified the following as the most key issues, both on grounds of importance and because they are relevant to the Equality Bill before Parliament. You asked what our expectations were for action by the Commission over these matters. We indicated that we hoped that the Commission would cause amendments to be made to the Equality Bill in line with our concerns, although we accept that the issues in 5 have not yet been sufficiently specified. We would welcome an early meeting to flesh these out in case some can be the subject of amendments to the Equality Bill while this is still possible:*

- ***[Schools Standards and Framework Act Section 58 and 60] , especially 60(5) [discrimination against teachers of the “wrong” faith and none and intrusion into belief, out of school activity including private life and worship or lack of it] and impermissible regression by virtue of Education and Inspections Act 2006, s 37. To head teachers of Voluntary Controlled schools and non-teaching staff in Voluntary Aided schools.***
- ***Faith based welfare: ability of religious organisations to discriminate on grounds of religion/belief in employment and possibly also service delivery. [Still important although lost in Equality Bill.]***
- ***Scouts – retention of recent exemption for existing charities on a religious oath.***

*As you know, the call was cut short due to technical difficulties. I would like to add a couple of items, but even after them this remains a preliminary list. The two items are Scouts (fourth) and education for the non-religious (fifth). Clearly in the latter case we need to have a discussion about this but the subject is so large it will need to be a dedicated meeting. Perhaps you could tell us when this would be convenient. I am happy to flesh this out initially by telephone, should you think this is likely to be a helpful.*

- ***All Roman Catholic Sixth Form Colleges, where we have already made a complaint to the European Commission which we know it has taken up with the Government. We insisted that the Bill Committee were informed about this. The attached correspondence explains more, but if you need any further information please come back to me.***
- ***Another major area we would like to cover with you relates for a to education in general – where in a multiplicity of ways the non-religious are disadvantaged to the extent that we are advised it is likely to engage Human Rights concerns. A flavour of this is given in the attached letter about school provision in Swanage. Some issues concern the non-religious being materially disadvantaged from access to local schools, or to good schools; there is evidence that faith schools' admissions criteria have the effect of allowing them to cherry pick pupils, creating “private schools on the rates”. The non-religious desirous of such schools are frequently forced to attend church when they would not otherwise do so and pay into the collection to obtain it, or go without education of equivalent calibre.***

*I am not sure whether the following injustice would be within the scope of the Equality Bill to rectify, but JCHR have backed our calls for pupils of sufficient maturity and intelligence to be allowed to opt themselves out of Collective Worship and Religious Education, but the Government have not acceded to this.*

- ***We touched on our concerns over the conflation of race and religion. Clearly with Jews, there is much understandable crossover (as we see with the JFS case). This crossover was why court decisions created precedents which permitted Jews, and similarly Sikhs, protection under race hatred legislation, something considered but specifically rejected by Parliament, we think wisely –***

*at least at that time. Now there is pressure to bring Muslims into this conflation. We have been disturbed by the eagerness of some Muslims to brand any criticism as “Islamophobia” and them adding that Islamophobia is racist and therefore those they judge guilty of Islamophobia are racist. This can develop into criticism of any Muslim or Islamic practice being branded as Islamophobic and hence racist. Similarly we find a tendency in the police and CPS, and the media, to describe attacks against Muslims and possibly other minority ethnic groups as racist. We accept that occasionally the word Muslim may be used as a proxy to evade a racist alternative in an attempt to circumvent the law, and if this is proved it should be treated as a racist matter. But we also worry that the lower burden of proof for racist matters may be being exploited.*

*As you may know, the Society was partly responsible for the much higher burden of proof in the Racial and Religious Hatred Act. We campaigned for this because we believe that freedom of expression is important and its suppression on such sensitive areas could even drive dissent underground to fester. Also, many religious matters (and indeed religious leaders) are contentious and can have powerful influences on behaviour; it is not in the public interest for either to be beyond spirited debate in a way that would be unthinkable on race.*

*Could we just log this issue for you to be aware of and to return to it after the more specific issues above have been dealt with, please?*

*You indicated that you were reviewing your litigation strategy. We would like formally to log items 1-4 above for consideration, and item 5 (education – the non-religious) when we have fleshed out this issues with you. We will be delighted to provide more detail. Item 6 to be considered thereafter.*

*You also informed us you would be consulting on Harassment in the context of the Equality Bill; we formally indicate our wish to participate. Please ensure we are personally sent the relevant papers for this and any other consultations on guidance notes.*

*We place on record our willingness to assist on any matters, respecting any confidentiality requested.*

*Yours sincerely*

*Keith Porteous Wood*

*Executive Director*

To this I added:

- Security body scanners: conflict between security and privacy/discrimination
- Equality for all under the law with particular reference to Sharia
- Religiously aggravated sentences (harsh – 7 year max) penalty and low prosecution thresholds making this in effect a multi-religious blasphemy law and a major threat to freedom of expression which I pointed out tended not to be prioritised because there was no perceived individual victim.
- (also shown in points 1,4 and 5 above) The grossly disadvantaged position of the non-religious (both pupils and teachers) in education, where even community schools are not secular. I emphasised that while the NSS did not believe that proselytising is a legitimate function for publicly-funded bodies and that we oppose faith schools in principle, our objections to the EHRC are on Human Rights grounds. I would welcome an opportunity to flesh out the latter area in particular.
- Work place discrimination including issues above and how non-religious are potentially put upon as having no worship requirements so left to do the work not done by those at worship, and in danger of losing holidays because they may find it difficult to resist claims by others for precedence on religious bank holidays or even Sundays.
- Multiple discrimination by some in (often male-dominated) minority/minority religious communities especially women, young people, gay people. Freedom of association/movement/education/work/conscience/religion issues. Also forced marriages, childhood marriages/ fgm, violent relationships with little escape custody issues – some tie in with Sharia.

As promised I attach the 100 page report which I presented to the EU Fundamental Rights Agency in Vienna, currently being on their advisory panel, but am stepping down shortly. IT is in the course of being updated and the version I am sending has not been scrupulously checked, so is for your internal use only. I have also attached a letter I sent the Director on deciding not to seek re-election which sets out some broader issues which may also be of interest.

From the tone of our meeting I am optimistic that our relations with the EHRC in future can be more fruitful than they were in the past and I am convinced Peter Vlachos, the staff and I have some perspectives and research that can assist you on all the new priorities (Freedom of expression/workplace discrimination and

conflicting rights) and others. You and your colleagues are welcome to call us if we can assist in any way. We look forward to hearing from you.

*Yours sincerely*

***Keith Porteous Wood***  
***Executive Director***